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CIRCULAR NIACI: 711

ACTION: Embassy Santiago

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Embassy Accra

Embassy Bonn

Embassy Paris

US expects Cuba quarantine will be taken pursuant to resolution of

Organ of Consultation. Soviets expected to claim, in UNSC, that resolution constitutes "enforcement action" under Article 53 UN Charter, and thus SC authorization required. LA position in SG crucial for disposing of this allegation. It is important that LA delegates in New York be instructed appropriately to oppose and defeat such contention in whatever form it may arise. Please call this matter to attention foreign minister or appropriate official. In discussing this, you may draw upon the following analysis:

Twice before UNSC has considered Art. 53. In September, 1960, Soviets alleged that OAS diplomatic and embargo measures against Dom. Rep. constituted "enforcement action". SC rejected that allegation. Earlier this year, Cuba claimed Punta del Este decisions required SC authorization. Again, SC disagreed.

Basic point which US will make is that measures taken by regional organizations which are recommendatory in form, rather than binding on members of the single organization, cannot be considered "enforcement action".

Dated by: 10/22/62 Telegraphic transmission and delivery to: ARA- Mr. Martin
L: LCM/ekar, R: L/UMA-LMarks:apj A/CD

Classification approved by:

REVIEWED by

10 NOV 1968

DATE 1/27/68

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Expression, "enforcement of action", appears in Art. 2(5) and Art. 5 of Charter. Action mentioned in these articles refers to action which SC is authorized to take under Arts. 40, 41, and 42. Art. 40 authorizes previous measures as preventive action. Articles 41 and 42 empower SC to enforce its decisions by calling upon UN members to apply certain measures or to take action directly. In acting under Arts. 40, 41, and 42, SC does more than recommend. It makes binding decisions, which members are obligated to carry out, and it gives direct orders of enforcement.

This character of SC actions under Arts. 40, 41, and 42 is to be distinguished from recommendations made by the SC under Art. 39 or by GA in discharging its responsibilities under Chapter 7 of Charter. GA has in past recommended use of armed force, despite contention that this constituted "action" which could only be taken by SC. Since GA powers are only recommendatory in field of peace and security, GA does not take "preventive" or "enforcement" action. This distinction between SC measure which is obligatory and constitutes "action", on the one hand, and measure which is recommended either by SC or by GA, on the other, was alluded to by Int. Court ~~Just.~~ Just. in advisory opinion of July 20, 1962 on UN expenses (UNEF and Congo).

Thus, in context UN bodies, "enforcement action" means action which is obligatory on all members. In considering character of measures taken by regional organization, it is reasonable to apply comparable standard in giving effect to "enforcement action" as it appears in Art. 53. Under Art. 20 of Rio Treaty, resolution on use of armed force is not obligatory on parties to

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Treaty. Thus, it would not constitute "enforcement action" under Art. 53.

History: San Fran. Conference supports view quarantine resolution compatible with UN Charter. Article 52(1) appeared originally in Dumbarton Oaks text. In interim between Dumb. Oaks and San Fran., Amer. Republics approved Act of Chapultepec. Part-II that Act is similar to provisions later incorporated Arts. 6 and 8 of Rio Treaty. Part III Act of Chapultepec went on to state:

"The above Declaration and Recommendation ~~must~~ constitute a regional arrangement for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action in this Hemisphere. The said arrangement, and the pertinent activities and procedures, shall be consistent with the purposes and principles of the general international organization, when established."

Thus Amer. Reps. gave their judgment that measures including the "use of armed force to prevent or repel aggression" constitute "regional action" which might appropriately be taken by a regional arrangement.

When Art. 52 was debated in Com. III/4 at San Fran. Conf., which considered Ch. VIII of Charter, ~~144th~~ Camargo(Columbia) ~~was~~ made lengthy statement concerning relationship Inter-American System and Ch. VIII of UN Charter. Statement ended with "the approval of Art. 52 implies that Act of Chapultepec is not in contravention of the Charter." (At San Fran. LAs vigorously defended need for autonomy regional orgs.)

View that quarantine resolution not "enforcement action" is consistent with purpose Art. 53. There was general recognition at San Fran. that regional orgs had important role to play in field peace and security, particularly with

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respect to disputes within a region. At same time it was clear that actions of regional orgs, particularly if they involved organized hostilities or were directed at outsiders, could have serious effect on security rest of world, which was responsibility of SC. Last 17 years have demonstrated that regional orgs operate in fact as restraint on actions individual members. Rio Treaty, for example requires two-thirds majority for peace and security measures.

It is relevant to note, in this context, that quarantine action relates to a regional matter, and is directed at a party to Rio Pact. These measures have, as their purpose, protection of hemispheric peace and security. ~~steps now contemplated are not designed to enforce anything on Cuba.~~

~~XXXXXXXXXXXX~~ Quarantine designed to protect and defend countries of Western Hemisphere against nuclear surprise attack. It is not for purpose of enforcing social or political changes upon or within Cuba.

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